

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
PAUL JENNINGS,

Plaintiff, : 12-cv-6926 (NSR) (JCM)

-against-

COMMISSIONER OF SOCIAL SECURITY,

Defendant. : ORDER ADOPTING REPORT  
AND RECOMMENDATION

-----X

NELSON S. ROMÁN, United States District Judge:

Paul Jennings (“Plaintiff”), through counsel, seeks review under 42 U.S.C. § 405(g) of a decision by the Commissioner of Social Security (“Defendant”). This case was previously referred to Magistrate Judge Judith C. McCarthy. On February 20, 2015, Magistrate Judge McCarthy issued a Report and Recommendation (“R & R”) pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72(b) recommending that this action be dismissed for failure to serve Defendant. For the following reasons, the instant action is dismissed.

**I. BACKGROUND<sup>1</sup>**

Plaintiff challenges a decision by the Commissioner of Social Security. He commenced the instant action on September 11, 2012. The docket reflects that the Clerk issued a Summons on the same day. Plaintiff has failed to file proof that the Summons and Complaint were served on Defendant within the 120 days required by Federal Rule of Civil Procedure 4(m).

On February 13, 2015, Magistrate Judge McCarthy ordered Plaintiff to show cause as to why this action should not be dismissed for failure to serve Defendant within the time limits

<sup>1</sup> Facts are taken from the R & R, unless otherwise noted.

prescribed by Rule 4(m). (ECF No. 5.) Plaintiff's attorney responded on February 18, arguing that he never received the Summons issued by the Clerk. (See ECF No. 6.)

On February 20, 2015, Magistrate Judge McCarthy issued the R & R recommending that this Court dismiss this action. Neither party has filed written objections to the R & R.

## **II. STANDARD OF REVIEW**

A magistrate judge may "hear a pretrial matter [that is] dispositive of a claim or defense" if so designated by a district court. Fed. R. Civ. P. 72(b)(1); *accord* 28 U.S.C. § 636(b)(1)(B). In such a case, the magistrate judge "must enter a recommended disposition, including, if appropriate, proposed findings of fact." Fed. R. Civ. P. 72(b)(1); *accord* 28 U.S.C. § 636(b)(1).

Where a magistrate judge issues a report and recommendation,

[w]ithin fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings or recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.

28 U.S.C. § 636(b); *accord* Fed. R. Civ. P. 72(b)(2), (3). However, "[t]o accept the report and recommendation of a magistrate, to which *no timely objection* has been made, a district court need only satisfy itself that there is *no clear error* on the face of the record." *Wilds v. United Parcel Serv., Inc.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003) (emphasis added) (quoting *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985); *accord* *Feehan v. Feehan*, No. 09 Civ. 7016, 2011 WL 497776, at \*1 (S.D.N.Y. Feb. 10, 2011); *see also* Fed. R. Civ. P. 72 advisory committee note (1983 Addition, Subdivision (b)) ("When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.").

### III. DISCUSSION

Here, as neither party objected to the R & R of Magistrate Judge McCarthy, the Court reviews the recommendation for clear error. The Court finds no error on the face of the Report and Recommendation. Rule 4(m) places the burden on Plaintiff of ensuring that service of the summons and complaint occurs within the 120-day limit. Attorney error does not constitute good cause, as noted by Magistrate Judge McCarthy, and Plaintiff has otherwise failed to show good cause for an extension. The Court adopts the R & R in its entirety.

### IV. CONCLUSION

For the reasons stated above, this Court adopts Magistrate Judge McCarthy's Report and Recommendation in its entirety. The instant action is dismissed for failure to serve Defendant within the time limits imposed by Federal Rule of Civil Procedure 4(m). The Clerk of Court is directed to close this case.

Dated: April 28, 2015  
White Plains, New York

SO ORDERED:



---

NELSON S. ROMÁN  
United States District Judge